

~~ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS~~

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARTIN DEMMENT ROYAL,)	No. C 13-2510 RMW (PR)
)	
Petitioner,)	ORDER GRANTING LEAVE TO
)	PROCEED IN FORMA
vs.)	PAUPERIS; ORDER TO SHOW
)	CAUSE
)	
M.E. SPEARMAN, Warden,)	
)	
Respondent.)	
_____)	

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner's application for leave to proceed in forma pauperis is GRANTED. The court orders respondent to show cause why a writ of habeas corpus should not be granted.

BACKGROUND

According to the petition, petitioner was convicted in Napa County Superior Court of charges of sexual misconduct. Petitioner unsuccessfully appealed his convictions to the California Court of Appeal and the California Supreme Court. Petitioner then filed a state habeas petition in the California Supreme Court, which was denied on May 1, 2013. Petitioner filed the underlying petition on June 4, 2013.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "in behalf of a person in

1 custody pursuant to the judgment of a state court only on the ground that he is in custody in
 2 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose
 3 v. Hodges, 423 U.S. 19, 21 (1975).

4 A district court shall “award the writ or issue an order directing the respondent to show
 5 cause why the writ should not be granted, unless it appears from the application that the
 6 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

7 **B. Petitioner’s Claims**

8 As grounds for federal habeas relief, petitioner alleges that trial counsel rendered
 9 ineffective assistance because he failed to advised petitioner about any plea offer. Liberally
 10 construed, the court orders respondent to show cause why the petition should not be granted.

11 **CONCLUSION**

12 1. The clerk shall serve by mail a copy of this order and the petition (docket no. 1)
 13 and all attachments thereto upon the respondent and the respondent’s attorney, the Attorney
 14 General of the State of California. The clerk shall also serve a copy of this order on the
 15 petitioner.

16 2. Respondent shall file with the court and serve on petitioner, within **sixty days** of
 17 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing
 18 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
 19 Respondent shall file with the answer and serve on petitioner a copy of all portions of the
 20 underlying state criminal record that have been transcribed previously and that are relevant to a
 21 determination of the issues presented by the petition.

22 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
 23 court and serving it on respondent within **thirty days** of the date the answer is filed.

24 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
 25 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
 26 2254 Cases within **sixty days** of the date this order is filed. If respondent files such a motion,
 27 petitioner shall file with the court and serve on respondent an opposition or statement of non-
 28 opposition within **twenty-eight days** of the date the motion is filed, and respondent **shall** file

1 with the court and serve on petitioner a reply within **fourteen days** of the date any opposition is
2 filed.

3 4. It is petitioner's responsibility to prosecute this case. Petitioner is reminded that
4 all communications with the court must be served on respondent by mailing a true copy of the
5 document to respondent's counsel. Petitioner must keep the court and all parties informed of any
6 change of address by filing a separate paper captioned "Notice of Change of Address." He must
7 comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal
8 of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

9 IT IS SO ORDERED.

10 DATED: FEB 11 2014



RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARTIN DEMMENT ROYAL,
Plaintiff,

Case Number: CV13-02510 RMW

CERTIFICATE OF SERVICE

v.

M E SPEARMAN, WARDEN,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 23, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Martin Demment Royal V65542
Rainer B-334U
CTF
PO Box 705
Soledad, CA 93960-0705

Dated: October 23, 2013

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk